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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1218 OF 2003

The State of Maharashtra Appellant
versus
Smt.Gangubai Appasaheb Bombade
and others Respondents

Mrs.G.P.Mulekar, AGP for appellant.
Mr.V.B.Rajure for respondents 1 and 2.
Mr.S.R.Singh for respondent no.7

CORAM : A.S.OKA, J.

DATE : 07th February 2007

PC :

1. Heard learned AGP for the appellant and Shri Rajure for respondents 1 and 2. I have also heard learned counsel appearing for respondent no.7. Learned advocates appearing for respondent nos.1, 2 and 7 have stated that their clients have not filed any appeal challenging the impugned award and the advocate for respondent nos.1 and 2 stated that his clients do not intend to file any cross objection.

2. The impugned judgement and award arises out

of a claim made u/s 166 of the Motor Vehicles Act, 1988. The first respondent is the mother of the deceased, the second respondent is the widow of the deceased and third and fourth respondents are minor daughters of the deceased. The accident occurred as a result of head on collision between a dumper and an ambassador car. The deceased was travelling in the said car. The finding of the learned Tribunal is that the accident occurred due to rash and negligent driving on the part of the driver of dumper as well as driver of the ambassador car. Therefore, the learned Member of the Tribunal held that this was a case of composite negligence attributable to both the drivers. The dumper involved in the accident was owned by the State Government. The second appellant is the Insurer of the said dumper.

3. The learned AGP submitted that the accident occurred due to sole negligence on the part of the driver of the ambassador car. She, therefore, submitted that the entire compensation is payable by the owner of the ambassador car and the Insurer of the ambassador car. She further submitted that the post mortem notes shows the age of the deceased as 40 years and, therefore,

multiplier of 12 applied by the Tribunal is on the higher side.

4. The learned Member of the Tribunal has considered the oral evidence of the witnesses. The learned Judge has considered the Spot Panchanama which shows that the width of the tar road at the spot of the accident is 20 feet. The dumper was proceeding from Southern side to Northern side, whereas, the ambassador car was coming from Northern side. The learned Judge noted that if the stationery position of both the vehicles as recorded in spot panchanama is taken into consideration, the accident occurred at a spot which is abutting the middle line of the tar road. The learned Judge, after considering the evidence, came to the conclusion that the driver of the dumper did not make any efforts to avoid the accident. The learned Judge found that at the spot of the accident, the ambassador car was found on its wrong side to some extent. Considering these aspects the learned Member of the Tribunal has recorded a finding of composite negligence and the negligance attributable to the drivers of the vehicles has been reasonably assessed at 50% each. I find no error in the said finding.

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5. The claim of the original claimants was that the monthly income of the deceased was Rs.5,000/- to 10,000/-. The learned Tribunal has taken the income @ Rs.3,000/- per month. After deducting 1/3rd on account of personal expenditure, the learned Judge should have taken the loss of dependency at 2/3rd of the monthly income. Instead of that, the learned Judge has taken dependency of only Rs.14,400/- (i.e. at the rate of Rs.1,200/- p.m.). Though the post mortem notes show that the age of the deceased was approximately 40 years, the birth extract of the deceased was produced on record. It shows that the date of birth of the deceased was 15th July 1961. Thus, going by the birth extract, the age of the deceased was about 33 years. Multiplier of 12 has been rightly applied by the learned Member of the Tribunal. I find that the compensation awarded is just and proper and no interference is called for. There is no merit in the appeal and the same is dismissed. No order as to costs.

(A.S.OKA, J.)